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2010 APR 15 PM 12:41

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**UNLIMITED JURISDICTION**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

WILLIAM TAYLOR,

Plaintiff,

vs.

CITY OF BURBANK, ET AL.,

Defendants.

CASE NO. BC422252

[Assigned to the Hon. John Shepard  
Wiley, Judge, Dept. "50"]

**REPLY IN SUPPORT OF MOTION:**

1. FOR DISCOVERY OF PEACE  
OFFICER PERSONNEL AND OTHER  
RECORDS; AND
2. TO COMPEL FURTHER  
RESPONSES TO INTERROGATORIES  
AND REQUEST FOR PRODUCTION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION OF  
GREGORY W. SMITH

Date: April 22, 2010  
Time: 8:30 a.m.  
Dept.: 50

Action Filed: 9/22/09  
FSC: November 5, 2010  
Trial: November 16, 2010

4/14

1  
2 **TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD, AND TO THE**  
3 **CITY OF BURBANK AND THE CITY OF BURBANK POLICE DEPARTMENT:**

4 **PLEASE TAKE NOTICE** that plaintiff William Taylor (hereafter "plaintiff") hereby presents  
5 the following reply in support of plaintiff's motion for an order that defendant City of Burbank and  
6 the Burbank Police Department ("BPD") produce certain records pursuant to *Evidence Code* §§  
7 1043 and 1045, and to compel further responses to plaintiff's Form and Special interrogatories  
8 and Request for Production pursuant to *C.C.P.* Sections 2030, et seq. and 2031, et seq. as set  
9 forth in the Separate Statements of Interrogatories and Categories of the Request for Production  
10 of Documents previously filed and served concurrently with the moving papers.

11  
12 **I. INTRODUCTION**

13 Plaintiff, Bill Taylor was 26 year employee and second highest ranking police official in  
14 Burbank until he disclosed high level corruption in the Police Department. Taylor had a flawless  
15 record.  
16

17 In response to Taylor's complaints, the City manager brought in a team of outside crises  
18 managers to sully and destroy Taylor and other minority officers that had complained about  
19 discrimination. This team included Richard Kreisler, a lawyer noted for his abilities to assist in  
20 covering up misconduct and corruption in small municipalities. Kreisler in turn hired an ex-police  
21 chief of a small community, named James Gardiner, to conduct an investigation of the Porto's  
22 incident. The investigation by Gardiner gives the illusion of credibility, but it was used to terminate  
23 all of the officers, including Deputy Chief Taylor, who had filed complaints of racial discrimination.  
24

25 This is not the first time Kreisler had hired Gardner to "shut down" a potential scandal in  
26 a small city. Kreisler was also brought in to placate a furor created when the mayor of La Mesa  
27 was found passed out drunk in his car by two La Mesa officers. The Mayor was not charged with  
28

1 any wrongdoing and this caused a public outrage. Kreisler hired Gardiner to "clean up" the Mayor.  
2 Gardiner conducted an investigation and found that there was no misconduct by the Mayor or the  
3 police officers. Kreisler, Gardiner and the City Manager refused to release the contents of the  
4 investigation to the public, hiding under Government Code protections.

5 Here, Gardiner, who was paid over \$100,000.00 and advertizes his services, found that  
6 Plaintiff Bill Taylor had obstructed the IA investigation in the aftermath of the Porto's robbery to  
7 protect Lieutenant Omar Rodriguez (another complainant for discrimination).

8 There is absolutely no direct evidence to support this finding. Gardiner collected the evidence by  
9 interviewing multiple witnesses over approximately nine months and then concluded, by himself,  
10 that Taylor should be terminated. Like the La Mesa incident, the City, Kreisler and Gardiner are  
11 hiding behind Pitchess so that they can "cherry pick" and limit Plaintiff from discovering evidence  
12 that will clearly show he was innocent of any wrongdoing.

13 Plaintiff requests the entire contents of each Porto's investigation because the investigation  
14 will show that there was no wrongdoing by Lieutenant Rodriguez. If there was no wrongdoing by  
15 Lieutenant Rodriguez, Bill Taylor could not have covered anything up to protect Rodriguez.  
16 Defendant wishes to hide these highly relevant documents under the protection of Pitchess and  
17 the Government Code and not disclose (IA 04-26-08-1 and 04-16-09) them because they know  
18 there is exculpatory evidence in these documents.

## 19 **II. STATEMENT OF FACTS**

20 It should be noted that defendant admits in its opposition that in December, 2007, the  
21 Portos Bakery in Burbank was robbed, and that the BPD conducted an investigation of the  
22 robbery. Defendant further admits that in 2008 defendant conducted an investigation into claims  
23 of alleged use of excessive force by members of the BPD during the investigation of the Portos  
24 Bakery robbery (purportedly against the perpetrators of the robbery, all of whom were convicted  
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1 of numerous felonies in connection with the robbery, and whose claims of "excessive force" were  
2 and are specious as would be expected coming from convicted felons). Defendant further admits  
3 that investigation was designated as BPD Internal Affairs file number 04-26-08-1. Defendant  
4 further admits that defendant determined that the claims of excessive force made by the convicted  
5 felons who perpetrated the Portos Bakery robbery were unsubstantiated.

6  
7 Thereafter, plaintiff complained to then BPD Chief of Police Tim Stehr that a BPD  
8 lieutenant was sexually harassing females at the Burbank Animal Shelter. Plaintiff recommended  
9 that the lieutenant be placed on leave pending an investigation of the lieutenant's misconduct.  
10 Chief Stehr refused to place the lieutenant on leave, and became angry at plaintiff for making the  
11 recommendation.

12 On or about March 19 and March 24, 2009, plaintiff informed Burbank City Manager  
13 Michael Flad ("Flad"), the highest ranking administrative official in the City of Burbank, about the  
14 magnitude of the sexual harassment conducted by the lieutenant at the Burbank Animal Shelter.  
15 In or around April and May 2009, on two separate occasions, plaintiff informed Flad that the  
16 lieutenant who had been accused of sexually harassing females at the shelter had inside  
17 information regarding Chief Stehr, and as a result thereof Chief Stehr had refused to place the  
18 lieutenant on administrative leave. Plaintiff also informed Flad that he believed that the lieutenant  
19 had in fact sexually harassed females at the Burbank Animal Shelter.  
20

21 On or about April 22, 2009, plaintiff informed Flad that documents concerning an excessive  
22 force investigation against the BPD were burglarized from Lieutenant Rodriguez' office, and that  
23 Chief Stehr was attempting to cover up the burglary. On or about April 30, 2009, plaintiff  
24 reiterated many of same concerns to Flad.  
25

26 From in or around April 2008 through May 4, 2009, plaintiff, then the Deputy Chief of Police  
27 of the Burbank Police Department, complained on at least eight different occasions to Chief Stehr  
28

1 that minority officers in the BPD were being subjected to discrimination, and were being unjustly  
2 targeted for termination. On or about April 15, 2009, and again on or about April 18, 2009, plaintiff  
3 reported to Burbank City Councilwoman Marsha Ramos, that he believed that minority officers in  
4 the BPD were being subjected to discrimination by the BPD by targeting them for unjust  
5 termination. On or about April 22, 2009, and again on or about April 30, 2009, plaintiff reported  
6 to Burbank City Manager Flad that he believed there minority officers in the BPD were being  
7 subjected to discrimination by the BPD.

8  
9       Thereafter, on or about May 4, 2009, in retaliation for his whistleblowing activities protected  
10 pursuant to *Labor Code* Section 1102.5 and protected activities in reporting and protesting  
11 discrimination in violation of FEHA against other BPD employees, plaintiff was demoted from the  
12 rank of Deputy Chief of Police to the rank of Captain. Although Defendant makes the incredulous  
13 claim that the Deputy Chief position was simply a "captain" in a deputy chief's clothes, abundant  
14 evidence exists to show this contention is pretext. In fact, the Department recently appointed a  
15 new Deputy Chief from outside the Department.

16  
17       On or about June 15, 2009, plaintiff filed a complaint for retaliation with the DFEH. On or  
18 about August 3, 2009, plaintiff filed a governmental claim for retaliation based upon *Labor Code*  
19 Section 1102.5 with the defendant.

20       On or about September 17, 2009, defendant sent plaintiff, via his counsel, a letter and a  
21 memorandum purporting to set forth the alleged internal affairs charges against plaintiff, which  
22 are part of BPD Internal Affairs Investigation 04-16-09. On or about September 30, 2009, plaintiff  
23 was interrogated by defendant regarding these alleged charges.

24  
25       On or about January 21, 2010, plaintiff was placed on involuntary leave by the BPD for  
26 specious and unfounded allegations of misconduct in regard to his involvement with BPD Internal  
27 Affairs file number 04-26-08-1. Thereafter, on or about March 31, 2010, plaintiff was served by  
28

1 defendant with a Notice of Intent to Terminate plaintiff for allegedly interfering with and obstructing  
2 BPD Internal Affairs file number 04-26-08-1. By means of this motion, plaintiff has requested the  
3 production of the entirety of BPD Internal Affairs file numbers 04-26-08-1 and 04-16-09, as well  
4 as further responses to written discovery propounded by plaintiff in this action.

5 **III. PLAINTIFF PROPERLY MET AND CONFERRED WITH DEFENDANT PRIOR TO FILING**  
6 **THIS MOTION**

7 First, plaintiff did meet and confer with defendant and its counsel regarding the discovery  
8 responses for which plaintiff seeks further responses. Defendant categorically refused to provide  
9 such further responses based upon an unfounded claim of an "on-going investigation privilege",  
10 a privilege for which defendant failed to provide, and continues to fail to provide, any relevant or  
11 apposite authority which supports its alleged claim of privilege. While defendant claims that it will  
12 provide further responses to such discovery, defendant has failed and refused to do so to date.  
13 As such, plaintiff was required to file the instant motion to compel defendant to provide such  
14 responses. Further, there is no statutory or other requirement that plaintiff meet and confer in any  
15 respect with defendant prior to filing a Pitchess motion.  
16

17 **IV. PLAINTIFF'S MOTION IS NOT "MOOT", AND DEFENDANT HAS PRODUCED ONLY A**  
18 **FRACTION OF THE REQUESTED INTERNAL AFFAIRS FILES**

19 Second, plaintiff's motion is not moot. While defendant claims that it has provided the  
20 personnel and other records sought pursuant to the motion under the Pitchess procedures, the  
21 truth is that defendant has only produced a fraction of the records sought by this motion.  
22 Defendant has "cherry-picked" the internal affairs records it has produced, and has produced only  
23 those records which defendant claims supports its decision to recommend the termination of  
24 plaintiff for allegedly "obstructing" the initial internal affairs investigation of BPD officers involved  
25 in the investigation of the armed robbery of the Portos Bakery in Burbank. As set forth above, the  
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1 initial internal affairs investigation bears BPD Internal Affairs file number 04-26-08-1, and the  
2 subsequent internal affairs investigation bears BPD Internal Affairs file number 04-16-09.

3 Defendant has only produced a fraction of the records pertaining to BPD Internal Affairs  
4 file numbers 04-26-08-1 and 04-16-09. By means of this motion, plaintiff has specifically sought  
5 the production of the entire contents of BPD Internal Affairs file numbers 04-26-08-1 and 04-16-  
6 09, including all documents evidencing or pertaining to BPD internal affairs investigation 04-26-08-  
7 1 and 04-16-09. (See notice of motion of moving papers, sub-paragraphs c and d.) Plaintiff is  
8 entitled to the production of these entire internal affairs file, including all notes, memoranda,  
9 statements, audiotapes, videotapes, reports, and any and all other documents regarding these  
10 investigations. Plaintiff is also entitled to the production of the complete dispositions of these  
11 investigations as to each and every BPD officer who was the subject of either of these  
12 investigations, including any and all recommendations made regarding such dispositions by  
13 former BPD Chief of Police Tim Stehr, current BPD Chief of Police Scott LaChasse, the alleged  
14 "independent review" panel that allegedly reviewed these investigations consisting of attorney  
15 Richard Kreisler, Merrick Bobb, and Debra Wong Yang, and any and all other individuals  
16 employed by and/or acting on the behalf or behest of the City of Burbank, the BPD, or anyone  
17 else.  
18  
19

20 Since defendant is specifically contending that plaintiff "obstructed" the initial investigation,  
21 plaintiff is entitled to such information and documents to establish that plaintiff in no manner  
22 obstructed the initial investigation, that the initial investigation was properly conducted and  
23 appropriate dispositions were made of the charges that were the subject of the investigation.  
24 Defendant cannot "have its cake and eat it too" - defendant cannot claim that the investigation  
25 was "obstructed", that such "obstruction" is evidenced by a second investigation and/or a review  
26 of the first investigation, and then refuse to produce the very same investigations and reviews  
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thereof to plaintiff so that plaintiff can establish that such claims of "obstruction" are utterly false and unfounded, and simply a pretext to retaliate against plaintiff for engaging in protected activities as a whistleblower under *Labor Code* Section 1102.5, and for protesting racial and other discrimination within the BPD as protected by the FEHA.

**V. PLAINTIFF'S MOTION SPECIFICALLY REQUESTS THE ENTIRE CONTENTS OF BURBANK INTERNAL AFFAIRS FILE NUMBERS 04-26-08-1 AND 04-16-09, INCLUDING THE RECORDS OF ANY BURBANK POLICE DEPARTMENT OFFICERS WHO WERE THE SUBJECT THEREOF**

Third, plaintiff's motion does specifically request the personnel records of any and all BPD officers who were the subjects of BPD Internal Affairs file number 04-26-08-1 and 04-16-09. Those are the very records requested in sub-paragraphs c and d in the notice of motion filed with plaintiff's moving papers. Plaintiff has not "inadvertently" sought such records - plaintiff has purposefully sought such records to definitively establish that plaintiff did not "obstruct the investigation of any the subjects of that investigation in any way, shape, or form. Plaintiff is not required to identify the names of such officers, since the names of the officers who were the subject of BPD Internal Affairs file numbers 04-26-08-1 and 04-16-09 are well known to defendant, and are specifically contained within the contents of these internal affairs files.

Indeed, there is no need at this juncture to reveal the names of these officers in a publically filed motion, particularly since plaintiff anticipates that the information and documents produced pursuant to this motion will be produced pursuant to an appropriate protective order binding on all parties, and that if the identities of such officers are required to be revealed during the litigation of this case the Court and the parties can agree upon appropriate sealing, redaction, or other methods to protect any alleged privacy rights of such officers. Notably, during the recent deposition of former Burbank Police Captain John Murphy, defense counsel for the City of Burbank specifically stated on the record that the privacy rights of multiple subjects of this investigation, who have filed public lawsuits against the City of Burbank, have been waived, and



1 that the City of Burbank specifically was not contending that any of these individuals had any  
2 remaining privacy rights in regard to these internal affairs investigations.

3 Defendant is not entitled to selectively "cherry pick" who has a right to privacy in regard to  
4 these internal affairs files and who does not. Defendant's claim would appear to be that if an  
5 employee has sued the City of Burbank and it is in the City's interest to claim that individual's  
6 privacy rights have been waived, then defendant will produce the employee's internal affairs  
7 records, but if the employee is one whose testimony is being used to attempt to defend the City,  
8 then the employee's internal affairs records will not be produced under alleged claims of privacy.  
9 However, the Pitchess procedure does not operate in that manner. Even if a peace officer's  
10 personnel records are confidential, such confidentiality must yield to a party's right to utilize such  
11 records to prosecute or defend claims of police misconduct, such as the bogus claims of  
12 misconduct levied against the plaintiff.  
13

14 A Pitchess motion need only include an affidavit showing good cause for the discovery  
15 sought, setting forth the materiality of the discovery to the pending litigation, and stating on  
16 reasonable belief that the identified agency has the information requested. *Evidence Code* §  
17 1043(b)(3). General allegations of relevancy/materiality are sufficient. *Pitchess v. Superior Court*  
18 (1974) 11 Cal.3d 531, 536. It is well settled that the affidavit, as here, may be made by counsel.  
19 *People v. Municipal Court (Hayden)* (1980) 102 Cal.App.3d 181, 185; *People v. Memro* (1985)  
20 38 Cal.3d 658, 676; *Larry E. v. Superior Court* (1987) 194 Cal.App.3d 25, 31 [counsel's affidavit,  
21 based on information and belief]; *Jalilie v. Superior Court* (1987) 195 Cal.App.3d 487, 488 [same];  
22 *Redding v. Municipal Court* (1988) 200 Cal.App.3d 1181, 1186, 1187; *San Jose v. Superior Court*  
23 *(Eti)* (1998) 67 Cal.App.4th 1135, 1145 [counsel's declaration based on information and belief is  
24 sufficient even though one other than defendant is the percipient witness]. Plaintiff in this action  
25 need only show that the records are relevant to this action, which they are indisputably are as  
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1 already admitted repeatedly under oath by the defendant itself in its own sworn discovery  
2 responses.

3 **VI. PLAINTIFF IS ENTITLED TO ALL OF HIS PERSONNEL RECORDS AND IS NOT**  
4 **REQUIRED TO SIGN ANY "WAIVER OF PERSONNEL PRIVILEGE FORM" TO OBTAIN**  
5 **HIS RECORDS**

6 Fourth, plaintiff is not required to sign any "Waiver of Personnel Privilege Form" to obtain  
7 his own personnel files. Plaintiff has an absolute right under *Government Code* Section 3300, et  
8 seq., popularly known as the "Peace Officer's Bill of Rights", to review and copy his personnel file  
9 at any time he so chooses. Defendant's refusal to produce to plaintiff his own personnel file is  
10 an express violation of *Government Code* Section 3306.5, which provides in pertinent part as  
11 follows:

12 (a) Every employer shall, at reasonable times and at reasonable intervals, upon the  
13 request of a public safety officer, during usual business hours, with no loss of  
14 compensation to the officer, permit that officer to inspect personnel files that are used or  
15 have been used to determine that officer's qualifications for employment, promotion,  
16 additional compensation, or termination or other disciplinary action.

16 (b) Each employer shall keep each public safety officer's personnel file or a true and  
17 correct copy thereof, and shall make the file or copy thereof available within a  
18 reasonable period of time after a request therefor by the officer. (Emphasis added.)

18 As such, defendant has no right to withhold any portion of plaintiff's own personnel file from  
19 plaintiff for any reason, and its refusal to produce plaintiff's personnel file to him is an express  
20 violation of *Government Code* Section 3306.5. Not only should this Court compel defendant to  
21 produce to plaintiff his entire personnel file, but also plaintiff is contemplating filing a further  
22 amended governmental claim against the defendant for its blatant violation of plaintiff's express  
23 statutory rights under the Peace Officer's Bill of Rights.

24 **VII. DEFENDANT'S CLAIM THAT IT "DOES NOT KNOW WHO TO NOTIFY" REGARDING**  
25 **PLAINTIFF'S MOTION IS SPECIOUS**

1 Defendant makes the specious argument that plaintiff should be required to disclose in a  
2 publically filed Pitchess motion the names of the BPD officers who were the subject of BPD  
3 Internal Affairs file numbers 04-26-08-1 and 04-16-09. Apparently, defendant's position is that  
4 plaintiff should utilize his knowledge of the identities of such individuals garnered during his  
5 involvement in BPD Internal Affairs file number 04-26-08-1 to publically identify them as the  
6 subjects of this investigation. Defendant would then claim under the "after acquired evidence  
7 doctrine" that plaintiff has violated his duties of confidentiality as the former Deputy Chief of Police  
8 supervising the BPD Professional Standards Bureau.  
9

10 Instead, plaintiff has presented this motion in the correct and proper manner by simply  
11 specifically identifying the internal affairs files sought by number. Defendant knows full well who  
12 were the subjects of these investigations, and was and is capable at all times of notifying such  
13 individuals that their personnel records are being sought by the instant motion. If defendant failed  
14 to do so, then that is defendant's problem, and is not the fault of plaintiff. Plaintiff timely and  
15 properly noticed this motion, and defendant had sufficient time to notify each of the individuals  
16 who records are sought by the instant motion.  
17

18 Further, plaintiff did not supervise or have any connection with BPD Internal Affairs  
19 Investigation 04-16-09 other than being falsely accused as a subject thereof, and therefore would  
20 not have knowledge of the identities of all of the subjects of that investigation. On the other hand,  
21 defendant has full knowledge of the identities of each of the subjects of that investigation, and had  
22 sufficient time to notify each of these individuals that their records are being sought by the instant  
23 motion. Plaintiff anticipates that the Court will issue an appropriate protective order that the  
24 information and documents produced pursuant to this motion will be produced in a manner that  
25 will protect the privacy rights of all officers involved, and that if the identities of such officers are  
26 required to be revealed during the litigation of this case the Court and the parties can agree upon  
27  
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1 appropriate sealing, redaction, or other methods to protect any alleged privacy rights of such  
2 officers.

3 By analogy, as held in *In re Valerie E.* (1975) 50 Cal.App.3d 213, 218, where a party  
4 seeking Pitchess records lacked the names of the prior complainants against the involved peace  
5 officers, or even information that complaints had been made, but specified the type of material  
6 sought, i.e., information about complaints of excessive force by the officers, the requested records  
7 should be ordered produced. Here, similarly, plaintiff has not specifically identified the subjects  
8 of BPD IA 04-16-09, since the complete identities of the subjects of this investigation are currently  
9 unknown to plaintiff, but has identified the information and materials sufficiently for defendant to  
10 identify such individuals and provide them with whatever notice is required that their records are  
11 being sought.  
12

13 Indeed, as recognized by the California Supreme Court in *Warrick v. Superior Court* (2005)  
14 35 Cal.4th 1011, 1026, a counsel's affidavit or declaration supporting a Pitchess motion may be  
15 made on information and belief, since counsel would only rarely be present when the alleged  
16 officer misconduct occurred and counsel will have little information to offer based on personal  
17 knowledge. Here, similarly, neither plaintiff or his counsel could be expected to know the identities  
18 of all of the subjects of an investigation in which plaintiff played no role other than being an  
19 individual unjustly accused of misconduct.  
20

21 In *Abatti v. Superior Court* (2003) 112 Cal.App.4th 39, the *Pitchess* motion contained an  
22 affidavit of counsel that related statements from other officers that the former officer had been  
23 asked to leave, and had been the subject of complaints of fabricating evidence, and was labeled  
24 a "liability" problem for the department. *Id.* at 46-47. The court considered counsel's affidavit  
25 sufficient, even though it merely averred the contents of the counseling memos rather than stating  
26 with specificity the evidence which was contained therein. The court reasoned that to require  
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28

PROOF OF SERVICE

STATE OF CALIFORNIA )

COUNTY OF LOS ANGELES )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years of age, and am not a party to the within action; my business address is 6300 Canoga Avenue, Suite 1590, Woodland Hills, California 91367.

On the date hereinbelow specified, I served the foregoing document, described as set forth below on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, at Woodland Hills, addressed as follows:

DATE OF SERVICE : April 14, 2010

DOCUMENT SERVED : **REPLY IN SUPPORT OF MOTION: 1. FOR DISCOVERY OF PEACE OFFICER PERSONNEL AND OTHER RECORDS; AND 2. TO COMPEL FURTHER RESPONSES TO INTERROGATORIES AND REQUEST FOR PRODUCTION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF GREGORY W. SMITH**

PARTIES SERVED : **SEE ATTACHED SERVICE LIST.**

XXX (BY FEDERAL EXPRESS) I caused the aforesaid document(s) to be delivered to Federal Express either by an authorized courier of Federal Express or by delivery to an authorized Federal Express office in a pre-paid envelope for overnight delivery to the addressee(s) as shown on the Service List.

XXX (BY ELECTRONIC MAIL) I caused such document to be electronically mailed to **Christopher Brizzolara, Esq.** at the following e-mail address: samorai@adelphia.net.

XXX (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

— (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

EXECUTED at Woodland Hills, California on April 14, 2010.

\_\_\_\_\_  
Selma I. Francia

**SERVICE LIST**

**WILLIAM TAYLOR v. CITY OF BURBANK**  
**LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC 422 252**

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Attention: Chief's Office  
Burbank Police Department  
200 N. Third Street  
Burbank, California 91502